

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA

v.

BRANDON SHANAHAN,

Defendant.

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Docket No. 3:16-CR-00069

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW THE DEFENDANT, Brandon Shanahan, by and through counsel, and submits the following sentencing memorandum in this case.

OFFENSE AND APPROPRIATE GUIDELINE RANGE

Mr. Shanahan has entered a plea of guilty to one count of interstate communications with the intent to extort, in violation of 18 U.S.C. § 875(d). He was originally charged in an indictment which alleged 14 counts of this offense, but entered a plea agreement which provided that he would plead guilty in count one, with the remaining counts dismissed. The plea agreement further contained provision for an agreed sentence pursuant to Rule 11(c)(1)(C) of the Rules of Criminal Procedure, specifically an agreement that a sentence of 18 months, to be followed by a one-year term of supervised release would be appropriate in this case. Though this plea agreement contains an agreement as to the appropriate sentence, the following sentencing memorandum is submitted in order to assist the Court in determining whether to accept the plea agreement as offered.

18 U.S.C. § 3553(a) FACTORS FOR THE COURT TO CONSIDER

A. HISTORY AND CHARACTERISTICS OF THE DEFENDANT

In large part, Mr. Shanahan is an unusual defendant. He was raised in a loving, supportive family. He graduated from Sweetwater High School, where he played on the football team. He has never had a prior criminal offense, and has never had a substance abuse problem. His conduct while on release pending the disposition of this case has been exemplary.

Mr. Shanahan's offense conduct is shocking. In short, he posed as a member of the University of Tennessee football team online and sought to extort from various female students photographs of themselves in a state of undress and sexually-oriented conversation. He attempted to convince these ladies to send him nude photographs by threatening to ruin their reputations. For these ladies, this was no doubt a terrifying and intrusive offense, difficult to distinguish from an actual assault.

Mr. Shanahan appears to be a man whose life had stalled. He was popular in high school, a good football player, and things were going well. Following graduation, Mr. Shanahan's friends went on to jobs or college, while Mr. Shanahan became a babysitter to his sister's children. He was a man whose life had failed to progress, with no real prospect of progression. He found himself isolated, awkward, and frustrated. When he began to assume the persona of a standout football player for the University of Tennessee, he became "interesting" again.

Perhaps it is not possible to understand how this developed into extorting ladies of intimate photographs. In person, Mr. Shanahan is a meek and respectful individual.

Whether this offense grew out of frustration or some other cause, it was ultimately a terrible decision.

B. SERIOUSNESS OF THE OFFENSE

By statute, this offense is not as serious as many. It is classified as a class “E” felony. However, Mr. Shanahan recognizes that the offense conduct in this case is different from the ‘garden-variety’ extortion attempt, in the sense that seeking to induce someone to pay money is different than extorting nude photographs from a person. On the other hand, there is no indication that Mr. Shanahan poses a risk of offending in ‘the real world’, that is, no risk that he would commit a hands-on assault of anyone. Though this is little consolation to the victims who were extorted, it is a factor the Court is urged to consider.

C. RESPECT FOR THE LAW

Mr. Shanahan’s conduct prior to and following his arrest on this case indicates that this is truly aberrant behavior, in the sense that he has no prior criminal history and no issues while on release pending the disposition of this case. Mr. Shanahan is someone with a strong respect for the law who has made a terrible mistake. This mistake, unfortunately, impacted the lives of his victims in a significant way, but the fact remains that it does not define him as a person.

D. JUST PUNISHMENT, ADEQUATE DETERRENCE, PROTECTION OF THE COMMUNITY AND NEEDS OF THE DEFENDANT

Mr. Shanahan is a youthful offender, barely out of high school when this offense was committed. Though the agreed-upon sentence is a reduction from his guideline range, there are several factors in favor of this sentence as just punishment and adequate deterrence.

As an initial matter, the agreed-upon sentence is a prison sentence, which is, in and of itself, a strong sanction, especially for a youthful, first-time offender. Additionally, Mr. Shanahan accepted responsibility early on in this case, as he agreed to be interviewed by law enforcement and gave an inculpatory statement setting out what he had done with the investigating officers. Mr. Shanahan further accepted responsibility by entering into a plea agreement with the Government. Though Mr. Shanahan's crimes were no doubt frightening and disturbing to the victims, he has made the best effort possible to make this situation right. By accepting responsibility for his actions, he has prevented the need for these victims to recount their experiences through a trial.

It is often argued that there are diminishing returns to a lengthy prison sentence, but in this case it is particularly true. Any lesson to be taught by incarceration will be learned by Mr. Shanahan by the time he reaches the end of his 18-month sentence. To incarcerate him further will not "correct" him any further. Frankly, the greatest benefit to society and to Mr. Shanahan will come from a program of counseling to address the issues that lead to this offense in the first place. Unlike the common extortion case, this case was not driven by greed, but by some other factor inside Mr. Shanahan's personality.

Though he benefits from this agreed-upon sentence, Mr. Shanahan urges this Honorable Court to find that there are justifiable reasons for the acceptance of this agreement. In this case, this agreement serves the interests of the victims by avoiding an embarrassing and disturbing trial. This agreement benefits Mr. Shanahan by placing him in the best possible position to be a successful and productive citizen despite this conviction. This agreement benefits society by making the most efficient use of our

limited criminal reform funding and by bringing Mr. Shanahan back into the fold of productive society rather than warehousing him in a penal institution. Mr. Shanahan is a young man who still has a lot to offer. This Honorable Court is urged to give him the opportunity to make good of it.

CONCLUSION

For the foregoing reasons, Mr. Shanahan respectfully urges this Honorable Court to accept the plea agreement in this matter and to sentence Mr. Shanahan to 18 months imprisonment to be followed by one year of supervised release.

Respectfully submitted this the 18th day of May, 2017,

/s/ Joshua D. Hedrick
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2017, a copy of the foregoing memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other interested parties will be served by regular US Mail. Parties may access this filing through the Court's electronic filing system.

/s/ Joshua D. Hedrick
Joshua D. Hedrick,
Attorney for Mr. Shanahan